

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

REYNOLDS INNOVATIONS, INC.,)	
)	
Plaintiff,)	
)	
)	
vs.)	Civil Action No. 1:11-CV-581
)	
)	
E-CIGARETTEDIRECT, LLC d/b/a)	
"E-CIGARETTEDIRECT.COM";)	
VEPPO, INC. d/b/a "E-)	
CIGARETTEDIRECT" and)	
"VEPPOCIG.COM"; SABINA KING,)	
individually and d/b/a "E-)	
CIGARETTEDIRECT.COM" and)	
"VEPPOCIG.COM"; and MICHAEL)	
KEITH KING, individually and d/b/a "E-)	
CIGARETTEDIRECT.COM" and)	
"VEPPOCIG.COM",)	
)	
Defendants.)	
)	

**PLAINTIFF'S MEMORANDUM REGARDING SERVICE OF DEFENDANTS
E-CIGARETTEDIRECT, LLC AND VEPPO, INC.**

Pursuant to the Court's Order dated January 31, 2012 (Dkt. No. 15), Plaintiff Reynolds Innovations, Inc., through counsel, hereby files this Memorandum Regarding Service of Defendants E-CigaretteDirect, LLC and Veppo, Inc., in support of Plaintiff's Motion for Final Judgment and Permanent Injunction by Default, filed October 12, 2011 (Dkt. No. 11).

I. FACTUAL BACKGROUND REGARDING SERVICE

Through the Declarations and exhibits filed contemporaneously herewith, Plaintiff shows the Court that timely and proper service was effected upon Defendants E-CigaretteDirect, LLC and Veppo, Inc.

As shown in the Declaration of Joseph V. Burns (“Burns Dec.”), Defendants E-CigaretteDirect, LLC and Veppo, Inc. are registered with the Colorado Secretary of State (“COSOS”). Burns Dec. at ¶¶ 5, 7 and Exs. 2, 4. As of July 6, 2011, Defendant Sabina King, P.O. Box 2741, Parker, CO 80134, was listed with the COSOS as Registered Agent for E-CigaretteDirect, LLC. *Id.* at ¶ 5 and Ex. 2. Also as of July 6, 2011, Defendant [Michael] Keith King, P.O. Box 2741, Parker, CO, 80134, was listed with the COSOS as Registered Agent for Veppo, Inc. *Id.* at ¶ 7 and Ex. 4. According to the COSOS, Sabina King remained the Registered Agent for E-CigaretteDirect and Keith King remained the Registered Agent for Veppo, Inc. until October 27, 2011. *Id.* at ¶¶ 12, 13 and Ex. 5-6.

After the filing of the Complaint in this matter on July 20, 2011 (Dkt. No. 1), unsuccessful attempts were made to serve the named Defendants with process at the address listed by Defendants on their Internet websites. *Id.* at ¶¶ 4, 8, 9 and Ex. 1. Though listed on Defendants’ websites as a physical business address, the address is actually that of the U.S. Post Office in Parker, Colorado. *Id.* at ¶ 8.

On August 5, 2011, copies of the summonses issued for the named Defendants, along with copies of the Complaint and related documents were mailed, via certified mail, postage pre-paid and return receipt requested, to each of the four named Defendants in this matter to the address listed with the COSOS for the Registered Agents for E-

CigaretteDirect, LLC and Veppo, Inc.: P.O. Box 2741, Parker, CO 80134.

Subsequently, signed copies of the four postal return receipts, including those for E-CigaretteDirect, LLC and Veppo, Inc., were received by counsel for Plaintiffs, signed by an individual who appears to be named “Kyle Hemenway” and dated August 25, 2011.

Id. at ¶ 10.

As shown in the Declaration of Laura Miller (“Miller Dec.”), after investigative efforts to physically locate and serve Defendants Sabina King and Michael Keith King in Parker, Colorado, were unsuccessful, Sabina King and Michael Keith King were found in La Grange, Illinois, and personally served with process through hand delivery of the summonses and Complaint in this matter. Miller Dec. at ¶¶ 3-5. On August 12, 2011, copies of the summonses issued for Defendants Michael Keith King, E-CigaretteDirect, LLC and Veppo, Inc., along with copies of the Complaint and related documents, were served upon, and accepted by, Michael Keith King at 8201 Hess Ave., La Grange, Illinois 60525. *Id.* at ¶ 5. Contemporaneously on August 12, 2011, a copy of the summons issued for Defendant Sabina King, along with copies of the Complaint and related documents, were also served upon, and accepted by, Sabina King at 8201 Hess Ave., La Grange, Illinois 60525. *Id.* Proof of service upon Defendants in La Grange, Illinois was filed with the Court August 19, 2011. Dkt. No. 7.

II. ALL DEFENDANTS WERE PROPERLY SERVED

As noted in the Court’s January 31, 2012 Order, “proper service may be effected under Rule 4(h) ‘by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to

receive service of process.’ Fed. R. Civ. P. 4(h)(1)(B).” Dkt. No. 15. Proper service may also be effected under Rule 4(h), “in the manner prescribed by Rule 4(e)(1) for serving an individual,” Rule 4(h)(1)(A), and Rule 4(e)(1) allows proper service “by following state law for serving a summons in an action brought in the courts ... in the state where the district court is located....” Rule 4(e)(1). North Carolina allows for service of process upon a domestic corporation or an unincorporated association by “delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served ...” or by “mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to ... the agent to be served....” N.C. R. Civ. P. 4(j)(6)(a, c), 4(j)(8)(a, c).

According to the COSOS, prior to October 27, 2011, Keith King was the Registered Agent for Veppo, Inc. Burns Dec. at ¶ 7 and Ex. 4. Keith King was also the incorporator for Veppo, Inc. *Id.* Also, according to the COSOS, prior to October 27, 2011, Sabina King was the Registered Agent for E-CigaretteDirect, LLC. *Id.* at ¶ 5 and Ex. 2. Sabina King was also the person who formed the LLC. *Id.* Defendants Michael Keith King and Sabina King were properly served, by hand, on the morning of August 12, 2012. At that same time, copies of the summonses issued to Veppo, Inc., and E-CigaretteDirect, LLC, together with copies of the Complaint and related documents, were simultaneously hand delivered to Mr. King and Ms. King in their capacity as registered agents for those entities.

III. ALL DEFENDANTS HAD NOTICE OF THE COMPLAINT

The Court of Appeals for the Fourth Circuit has long held that the purpose of service is notice:

“[T]he real purpose of service of process is to give notice to the defendant that he is answerable to the claim of the plaintiff” and that “where actual notice of the commencement of the action and the duty to defend has been received by the one served,” service under Rule 4(d) “should be liberally construed to effectuate service and uphold the jurisdiction of the court....”

Karlsson v. Rabinowitz, 318 F.2d 666, 668–669 (4th Cir. 1963).

Here, there is no doubt that each named Defendant had notice of the Complaint. Indeed, all four named Defendants, as a group, mailed to the court for filing in this case a package of several documents including: “Defendants Response to Plaintiff’s Complaint Filed 07/20/2011” (dated October 22, 2011); “Defendants Motion to Remove Individual Names from Complaint Filed 07/20/2011” (dated November 2, 2011); “Defendants Motion to Vacate Default Filed 09/12/2011” (dated November 2, 2011); and “Defendants Response to Plaintiff’s Motion for Final Judgment and Permanent Injunction by Default Filed 10/12/2011” (dated November 2, 2011). Copies of the referenced attempted filings, as served upon Plaintiff, are attached hereto as Exhibits A through D. All four of these attempted filings include the full caption of this case, including the case number, and are signed by Michael Keith King, P.O. Box 2741, Parker, CO 80134. Exs. A-D. The signature block on all of the documents includes the email address “keithk@e-cigarette.direct.com”, and the notation that Mr. King is “Representative for” E-CigaretteDirect, LLC, Veppo, Inc. and Sabina King. *Id.* On November 28, 2011, the Court entered a Deficiency Order regarding these documents, struck these documents

from the record, and ordered Defendants to file a proper response by December 30, 2011. Dkt. No. 14. To date, Defendants have submitted no further response to the Court.

Although the court refused to recognize non-attorney Michael Keith King as a legal representative for E-CigaretteDirect, LLC and Veppo, Inc., the attempted filing of the deficient papers shows that Mr. King holds himself out to be the duly authorized agent for these entities, a reality supported by the records and events detailed in the Declarations of Joseph V. Burns and Laura Miller. Therefore, through Mr. King, Defendants E-CigaretteDirect, LLC and Veppo, Inc. clearly had notice of the complaint to which they attempted to respond.

For the foregoing reasons, each of the named Defendants has been properly served and had actual notice of the Complaint. Plaintiff respectfully requests that the Court proceed to rule on Plaintiff's Motion for Final Judgment and Permanent Injunction by Default.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted, this the 14th day of February, 2012.

/s/ William M. Bryner

William M. Bryner, N.C. State Bar No. 23022

Laura C. Miller, N.C. State Bar No. 34103

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Attorneys for Plaintiff

Reynolds Innovations, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing **Plaintiff's Memorandum Regarding Service of Defendants E-CigaretteDirect, LLC and Veppo, Inc.** with the Clerk of the Court using the CM/ECF system. I further certify that copies are also being deposited with the U.S. Mail, postage prepaid, addressed to:

Michael Keith King
P.O. Box 2741
Parker, Colorado 80134

Sabina King
P.O. Box 2741
Parker, Colorado 80134

E-CigaretteDirect, LLC
P.O. Box 2741
Parker, Colorado 80134

Veppo, Inc.
P.O. Box 2741
Parker, Colorado 80134

This the 14th day of February, 2012.

/s/ Laura C. Miller

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